

PAUL W. SMITH

IBLA 84-206

Decided June 20, 1985

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting four desert land entry applications N 024125, N 024127, N 024129, and N 024131.

Affirmed.

1. Desert Land Entry: Generally -- Desert Land Entry: Applications

In the absence of statutory authority, no "second entry" can be made under the Desert Land Act, 19 Stat. 377, 43 U.S.C. § 321 (1982). Under the regulation, 43 CFR 2521.1(b), right of desert land entry is exhausted by the making of an entry.

APPEARANCES: Paul W. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Paul W. Smith appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 18, 1983, which rejected four desert land entry applications N 024125, N 024127, N 024129, and N 024131. The basis for rejection of the applications was that appellant's right of entry "was exhausted February 18, 1983, when entry was allowed for N-24128."

In his statement of reasons for appeal appellant contends as follows: "1. I am being allowed only 60 acres. All qualified entries are entitled to 360 acres. 2. Where I was denied 300 acres for what I feel was unjustified reasons by the State Office, I contend I should be eligible for another 300 acres."

[1] Section 1 of the original Desert Land Act, Act of March 3, 1877, 19 Stat. 377, provided: "[N]o person shall be permitted to enter more than one tract of land and not to exceed six hundred and forty acres \* \* \*." The Act of August 30, 1890, reduced the allowable acreage to 320 acres. 26 Stat. 391, 43 U.S.C. § 321 (1982). The applicable regulation, 43 CFR 2521.1(b), states that a right of entry "is exhausted either by filing an allowable application and withdrawing it prior to its allowance or by making an entry or by taking an assignment of an entry, in whole or in part." Referring to

[\*248] the Act of September 5, 1914, 1/ (38 Stat. 712, 43 U.S.C. § 182 (1970)), the regulation further provides that a second entry may be made where a previous allowable application has been filed but where the entry was lost, forfeited, or abandoned through no fault of the entryman. However, in the absence of statutory authority, no "second entry" can be now made for desert land. Bruce C. Newcomb, 48 IBLA 263, 264, 265 (1980).

The limiting provision in 43 CFR 2521.1(b) is the entryman's entitlement to only one desert land entry. That regulation speaks in terms of "allowable" applications for such entries. That right is exhausted by the specific events listed in the regulation: the filing and withdrawal of an allowable application prior to allowance, the making of an entry, or the taking of an assignment of an entry. Bruce C. Newcomb, supra at 265.

One exception to the provision that no second entry can be made is found at 43 CFR 2521.1(b)(2), which provides:

The Act of June 16 1955, (69 Stat. 138) authorizes any person who prior to June 16, 1955, made a valid desert-land entry on land subject to the Acts of June 22, 1910 (36 Stat. 583; 30 U.S.C. 33-85), or of July 17, 1914 (38 Stat. 509; 30 U.S.C. 121-123), if otherwise qualified to enter as a personal privilege not assignable, an additional tract of desert land, providing such additional tract shall not, together with the original entry, exceed 320 acres. Applicants and entrymen under the Act of June 16, 1955, are subject to, and must comply with, all the regulations of this part, including the acreage limitations of § 2520.0-8(b). [Emphasis added.]

Since appellant's applications were made well after 1955, the exception provided by 43 CFR 2521.1(b)(2) is unavailable to appellant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Will A. Irwin  
Administrative Judge.

---

1/ Repealed by section 702 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, 2787, effective immediately as to desert land entries, but effective 10 years from Oct. 21, 1976, as to the homestead laws insofar as they apply to public lands in Alaska.

